NOS. 09-1454 AND 09-1478

IN THE
Supreme Court of the United States

BOB CAMRETA,

Petitioner,

v.

SARAH GREENE, PERSONALLY AND AS NEXT FRIEND FOR S.G., S.G., A MINOR, AND K.G., A MINOR,

Respondent.

JAMES ALFORD,

Petitioner,

v.

SARAH GREENE, PERSONALLY AND AS NEXT FRIEND FOR S.G., A MINOR, AND K.G., A MINOR,

Respondents.

On Writ of Certiorari To The United States Court of Appeals for the Ninth Circuit

BRIEF OF THE FAMILY RESEARCH COUNCIL AND THE AMERICAN COALITION FOR FATHERS AND CHILDREN AS AMICI CURIAE IN SUPPORT OF THE RESPONDENTS

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INTEREST OF *AMICI*

Amici are non-profit organizations, with memberships in various states, that share a common concern over laws and policies that impact the family. The Family Research Council (FRC) is a 501(c)3 non-profit organization located in Washington, D.C., that exists to develop and analyze governmental policies affecting the family. FRC is committed to strengthening traditional families in America and advocates policies promoting that goal. Therefore, FRC supports an understanding of the Fourth Amendment that protects parents' rights regarding their children's interaction with government agencies. The American Coalition for Fathers and Children (ACFC) based in Washington, D.C. is also a non-profit organization that recognizes the parent and child relationship is essential to our society and constitutionally protected against unreasonable government interference. Their collective work has included policy reports, education, testimony before governmental bodies, and litigation.[1]

LEGAL ARGUMENT

The propriety of child abuse investigations is inextricably intertwined with one of this nation's oldest, most sacred fundamental liberties—the right

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[1] . *Amici*, pursuant to the open consent letters filed by the respective counsel for Petitioners and Respondent, submit this brief in support of the Respondent, Greene family. In accordance with Supreme Court Rule 37.6 *Amici* state that no attorney from any of the parties participated with, or paid for, this *amicus* brief.

of parents in the care, custody, control, and management of their child, and the right to maintain family integrity. The Ninth Circuit's holding was in part based on the Fourteenth Amendment fundamental liberty interest of parents. *Greene v. Camreta*, 588 F.3d 1011, 1037 (9th Cir. 2009). Even this Court's consideration of the matter under the Fourth Amendment, will undoubtedly implicate the parents' procedural and substantive due process rights under the Fourteenth Amendment. *M.L.B. v. S.L.J.*, 519 U.S. 102, 121 ("due process and equal protection principles converge"). "What process is constitutionally due cannot be divorced from the nature of the ultimate decision that is being made." *Parham v. J.R.*, 442 U.S. 584, 608 (1979).

I. PARENTS HAVE A FUNDAMENTAL LIBERTY INTEREST IN THE CUSTODY, CARE, CONTROL AND MANAGEMENT OF THEIR CHILDREN UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

"[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition." *Moore v. City of East Cleveland*, 431 U.S. 494, 503-04 (1977) (plurality opinion). This Court has long recognized the fundamental right of natural parents to direct the upbringing of their children, especially when the state purports to know better. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion); *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996); *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982); *Parham v. J.R.*, 442 U.S. 584, 608 (1979); *Prince v.*

Massachusetts, 321 U.S. 158, 166 (1944); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). Uniformly, these cases uphold the time honored principle that *parents* have a fundamental liberty interest in maintaining the care, custody, companionship and management of their children.

In *Meyer*, a German schoolteacher challenged his conviction for illegally teaching a foreign language to students. *Meyer*, 262 U.S. at 397. Meyer argued that the law unreasonably infringed on his liberty interest protected by the Fourteenth Amendment. *Id.* at 399. This Court embraced Meyer's argument, explaining:

> While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes ... the right of the individual ... to marry, establish a home and bring up children ....
>
> [The teacher's] right to teach and the right of parents to engage him so to instruct their children, we think are within the liberty of the Amendment.

Id. at 399-400. *Meyer* began the long cascade of cases specifically rejecting a broad *parens patriae* notion that children were held in "common" between the State and the parent. *Id.* at 401.

Two years later, in *Pierce v. Society of Sisters*, *supra*, this Court again upheld the wide scope of the liberty interest provided to parents by the Fourteenth Amendment when it overturned an Oregon statute that prohibited parents from enrolling their children in private school. *Pierce*, 268 U.S. at 530. Relying on *Meyer*, this Court held that the statute:

> unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. ... The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

Id. at 534-35.

This Court again revisited the issue of parental rights in *Prince v. Massachusetts*, *supra*, when a woman took her niece (over whom she had custody), to sell religious literature on the streets of Boston. The woman was convicted for violating a child labor law. *Prince*, 321 U.S. at 160-61. Here, this Court concluded that the state's interest in prohibiting

child labor outweighed custodial rights, but cautioned that its "ruling d[id] not extend beyond the facts the case present[ed]." *Id.* at 171 ("religious training and indoctrination of children may be accomplished in many ways ... [t]hese and all others except the public proclaiming of religion on the streets ... remain unaffected by the decision").

This Court reaffirmed its commitment to the rights of natural parents in *Wisconsin v. Yoder*, 406 U.S. 205, 207 (1972), overturning convictions of Amish parents for removing their children from school before age sixteen. The state's interest in providing universal education had to "yield to ... the interest of parents in directing the rearing of their off-spring." *Yoder*, 406 U.S. at 213-14. The *Yoder* Court noted that the state can override parents only where "it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens." *Id.* at 233-34. "The primary role of parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Id.* at 232.

Around the same time, this Court also took up the issue of parental rights as applied to an unwed father in *Stanley v. Illinois*, 405 U.S. 645 (1972). Following the death of the mother, Stanley, the natural father, directed that his children move into his friend's home, much to the chagrin of the state, which sought to make another choice for the children. *Stanley*, 405 U.S. at 658.

> The private interest here, that of a man in the children he has sired and raised,

> undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children "come[s] to this Court with a momentum for respect lacking when appeal is made to the liberties which derive merely from shifting economic arrangements."

Id. at 651. This Court concluded "that all [ ] parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody" and laid the groundwork for the presumption of parental fitness. *Id.* at 658.

In *Moore v. City of East Cleveland*, *supra*, this Court struck down a housing ordinance that restricted categories of relatives who could live together as "intrud[ing] on choices concerning family living arrangements." *Moore*, 431 U.S. at 499 (plurality opinion). The *Moore* court employed the principles elucidated in "*Yoder, Meyer* and *Pierce*" in a school setting, and extended them to "households" where "decisions concerning child rearing" were "shared with ... other relatives" who take on major responsibilities for the child. *Id.* at 503-05.

In *Parham v. J.R.*, *supra*, this Court considered the ability of the state to second guess the decisions of natural parents to commit their own child to a mental institution without state approval. This Court recognized that parents made such difficult

choices based on their own observations and independent professional recommendations, and that "[n]either state officials nor federal courts are equipped to review such parental decisions." *Parham*, 442 U.S. at 604.

> [H]istorically [the law] has recognized that natural bonds of affection lead parents to act in the best interest of their children. ... The statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children is repugnant to the American tradition.

Id. at 602-03 (emphasis in original); *see also Smith v. Organization of Foster Families*, 431 U.S. 816, 847, 860 (1977) (differentiating foster families as "squatters" to the rights enjoyed by natural parents, who would have a "liberty interest" in the "survival" or an "expectancy" of "continuation" of their family that is protected under the Fourteenth Amendment).

Finally in 1982, in *Santosky v. Kramer*, 455 U.S. 745 (1982), this Court squarely addressed parental rights in the context of a state proceeding seeking to extinguish both a family's natural and legal relationship. The *Santosky* Court held that before a state could completely and irrevocably sever the rights of a parent in their natural child, due process required that the state support its allegations by at least clear and convincing evidence. New York's statutory scheme providing for a "fair preponderance of the evidence" standard was "inconsistent with due

process" owed to parents and children. *Santosky*, 455 U.S. at 758. The Court held that the private interest affected in maintaining family association was a "commanding" one, and that the "risk of error" from employing the lower standard of proof was "substantial" since it distributed a near equal allocation of risk of error as shared between the parents and the State. *Id.* at 761 ("we have no difficulty finding that the balance of private interests strongly favors heightened procedural protections").

Though the children had been in the state's care for three years, and the parents were not ideal, this Court held that the "fundamental liberty interest of natural parents in the care, custody and management of their child" did not "evaporate." *Id.* at 753. The Court again reiterated that a natural parent's "interest [is] far more precious than any property right." *Id.* at 758-59.

After *Santosky*, this Court decided that a state may not condition a right to appeal a termination of parental rights decree on that parent's ability to pay a record preparation fee in *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996). Though much of the *M.L.B.* opinion was based on the equal access to courts rationale, this Court nonetheless reaffirmed that the family relationship is a protected associational right that is "sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect." *M.L.B.*, 519 U.S. at 116.

Even within the last decade, this Court has remained steadfast to the rights of natural parents.

In *Troxel v. Granville*, 530 U.S. 57 (2000), six justices coalesced around the parents' liberty interest to determine a child's associations, finding "breathtakingly broad" a state law that, based on a "best interest" standard, opened the door to any third parties seeking legal relationships with children over the objections of the natural parents. *Troxel*, 530 U.S. at 65-68 (plurality opinion), 78 (Souter, J., concurring), 80 (Thomas, J., concurring).

> The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court.

Id. at 65 (plurality opinion), accord at 77 (Souter, J., concurring); 80 (Thomas, J., concurring).

The distillation of these cases means that natural parents have the protected right to direct, control, care for, and manage their children, including the right to determine their associations, for what purpose, for how long, and of what they are informed. This fundamental liberty is not diminished simply because an abuse allegation was cast, or when children are located away from their home or parents.

II. PARENTS DO NOT FORFEIT THEIR FUNDAMENTAL LIBERTY INTERESTS BY ENROLLING THEIR CHILDREN IN PUBLIC SCHOOL.

The parents' right to control the education of their children is fundamental. When schools are employed to this end, they are entrusted agents of the parents' desire to carry out the educational process. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 654 (1995) (public school children are only "committed to the temporary custody of the State as schoolmaster"); *Meyer*, 262 U.S. at 400 ("it is the natural duty of the parent to give his children education suitable to their station in life"); *Yoder*, 406 U.S. at 213 (the state's interest in education, *i.e.*, creating good citizens ... "yield[s] to ... the interest of parents in directing the rearing of their off-spring"); *Prince*, 321 U.S. at 166 (parents have the "primary function" to prepare children); *Troxel*, 530 U.S. at 65-66 ("It is cardinal with us that the custody, care and nurture of the child reside *first* in the parents") (emphasis added). Thus, the State is merely acting *in loco parentis* to fulfill the educational mission, *New Jersey v. T.L.O*, 469 U.S. 325, 336 (1985), and in entrusting children to schools, *parents are merely extending their authority to educate the child, not giving up their rights or authority over the child.*

> [A parent] may ... delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then *in loco parentis*, and has such a portion of the power of he parent committed to his charge, viz. *that of restraint and correction*, as may be

> necessary to answer the purposes for which he is employed.

Vernonia Sch. Dist., 515 U.S. at 655, quoting 1 William Blackstone, Blackstone's Commentaries on the Laws of England 441 (1769) (emphasis added).

For that reason, schools receive some latitude and escape exacting constitutional scrutiny when it comes to "maintaining order and discipline" in the school because that goal is consonant with the overall educational mission. *T.L.O.*, 469 U.S. at 340; *Edwards v. Rees*, 883 F.2d 882, 884 (10th Cir. 1989). But children do not belong to the State "during classroom hours" and to parents afterwards. *Tinker v. Des Moines Indep. Comm. Sch. Dist.*, 393 U.S. 503, 506, 512 (1969). Children are always extensions of their family. *Pierce*, 268 U.S. at 534-35.

Petitioners argue that the child's privacy interests must only be balanced against the State's interest in child abuse. (Camreta Brief 15; Alford Brief 32-33). However, that proposition makes S.G. (the child in question) a "mere creature of the State," by implying that her parents choice for her to attend public school makes anything fair game. But this Court has held that its "decision[s] cannot be taken as establishing that the State may impose and enforce any conditions that it chooses upon attendance at public institutions of learning, however violative they may be of fundamental constitutional guarantees." *Tinker*, 393 U.S. at 507 n.2.

Petitioner Alford discounts any affront to the fundamental liberty interests of S.G.'s parents because he sought "permission" from the school "to interview S.G." (Alford Brief 8). But schools cannot give meaningful consent to an interview. *Tinker*, 393 U.S. at 511 ("[s]chool officials do not possess absolute authority over their students"); *Doe v. Heck*, 327 F.3d 492 (7th Cir. 2003) (school officials cannot consent for the parents to produce a child). Nor can passivity or silence form a basis for consent. *Dubbs v. Head Start, Inc.*, 336 F.3d 1194 (10th Cir. 2003) (head start program needed actual parental consent to do physical examination of children).

Additionally, there is a logical disconnect to treating the school, a state actor, simultaneously, as a parental surrogate for purposes of consent:

> If school authorities are state actors for purposes of the constitutional guarantees of freedom of expression and due process, it is difficult to understand why they should be deemed to be exercising parental authority when conducting searches of their students.

T.L.O., 469 U.S. at 336. One agency of the government cannot give consent for the parents to another state instrumentality. *Greene*, 588 F.3d at 1030 n.18. "The handing over of a child from a public school teacher to another State official, then, is not the equivalent of the consent of the parents." *Tenenbaum v. Williams*, 193 F.3d 581, 594 n.9 (2nd Cir. 1999).

Children also cannot give meaningful consent because of the legal handicap of minority. "The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions." *Troxel,* 530 U.S. at 68. Moreover, children would naturally feel overpowered and are too vulnerable to terminate encounters with agents of the State. *See Jones v. Hunt*, 410 F.3d 1221 (10th Cir. 2005) (*T.L.O.* and *Rees* cases are distinguished as "maintaining school discipline" cases, and irrelevant to determining if a seizure has occurred); *Doe,* 327 F.3d at 510. Parents are the natural guardians of their children and speak exclusively for their children. *Dubbs*, 336 F.3d at 1207.

Therefore, only a parent can give meaningful consent to an interview, and that consent must be knowing and voluntary. *Darryl H. v. Coler*, 801 F.2d 893 (7th Cir. 1986) (mother comforting child during a physical strip search at school is not voluntary consent); *Franz v. Lytle*, 997 F.2d 784 (10th Cir. 1993) (misleading parent on nature of the investigation means no consent); *Ferguson v. City of Charleston*, 532 U.S. 67 (2001) (no consent of drug-addicted mothers for hospital tests that were disclosed to government); *Roe v. Texas Dept. of Protective and Reg. Servs.*, 299 F.3d 395 (5th Cir. 2002) (initial allowance to investigator for home interview did not extend "consent" to photographing child's body).

The public school's reflexive accommodation of other agents of the state is no substitute for the consent of a parent.

III. THE NONCONSENSUAL INTERROGATION OF THE CHILD VIOLATED THE PARENTS' CONSTITUTIONAL RIGHT TO PRIVACY, RIGHT TO DIRECT THE EDUCATION OF THE CHILD, AND RIGHT TO DETERMINE FAMILIAL ASSOCIATION.

"Privacy interests suffer[ ]" when government officials intrude into the life of the family. *Jones v. Hunt*, 410 F.3d 1221, 1225 (10th Cir. 2005); *T.L.O.*, 469 U.S. at 335. The right of familial privacy belongs to every member of the family regardless of location.[2] No parent or child is any less a member of their family when attending school or work, driving around town, or conducting any other activity outside the home. The liberty interest of parents in maintaining the custody, control, care and management of their children becomes "less secure" if their privacy interests are eroded simply because members of their family are temporarily in different locations. *See Griswold v. Connecticut*, 381 U.S. 479,

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[2] "The focus of the [Fourth] Amendment is [ ] on the security of the person, not the identity of the searcher or the purpose of the search." *Dubbs*, 336 F.3d at 1206. "[T]he Amendment focuses on safeguarding persons from unwarranted intrusion ...." *Jones*, 410 F.3d at 1225 (citing *Dubbs*, 336 F.3d at 1205 ("There is no 'social worker' exception to the *Fourth Amendment*")); *see also* Doriane Lambert Coleman, *Storming the Castle: The Ironic Costs of a Child Welfare Exception to the Fourth Amendment*, 47 William & Mary L. Rev. 413 (2005).

482-83 (1965) ("[w]ithout those peripheral rights the specific rights would be less secure").

"An essential aspect of privacy ... is the parent's and the child's interest in the privacy of their relationship with each other." *Calabretta v. Floyd,* 189 F.3d 808, 820 (9th Cir. 1999). The questioning of a child (on any nonconsensual topic) by a third party, in and of itself, violates the privacy rights of both the child and his parents, whether the state directed inquiry centers around pet cats, or veers off into a discussion about parental reading choices, drinking and smoking habits, family history, or discipline methods.. *Doe,* 327 F.3d at 504, 510 (going "to the school for the specific purpose of gathering information" is a "search"). The home lives of children do not become a proverbial "open book" when they attend a public school. "[E]ven where the child is too young to have the same subjective sense of bodily privacy," certain actions unquestionably affect the "legitimate expectations of the parents ..., protected by the fourteenth amendment, that their familial relationship will not be subject to unwarranted state intrusion." *Calabretta,* 189 F.3d at 818. Unreasonably intrusive state action cannot be justified on the basis of sexual abuse occurring "in secret" because family life in general occurs in private, and the right of each family member to maintain this privacy is constitutionally protected.

An interrogation of the child as to her home life, if done without parental consent, constitutes a deprivation of the parents' fundamental liberty interest in family association as well. *M.L.B.*, 519 U.S. at 116. Thus, it is a constitutional betrayal to

parents who, through their own constitutional authority, placed a school *in loco parentis,* when that school, without notice or consent, removes their children from class and places them into a secluded room with strangers so that the State can explore allegations. Parents and children maintain their inextricable and non-circumstantial "expectations of privacy" in a public school setting, even if a child is too young to appreciate such a right. *Doe*, 327 F.3d at 512; *Darryl H.*, 801 F.2d at 901.

Indeed, schools routinely require written parental permission for a field trip, and yet, flout parental prerogatives in handing over someone else's child to perfect strangers to have *carte blanche* in asking anything the state asserts as important.[3] This irony is especially great where the nonconsensual conversation implicates the child's present and future relationship with his family, and vice-versa.

Parents have an interest in who their child is talking to, whether malicious strangers, positive role models, corruptible childhood companions, or child protective investigators with their own agenda. *Troxel*, 530 U.S. at 78 ("a parent's interest in

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[3] Oregon did not require law enforcement or child protective investigators to notify or seek the consent of parents in interrogating their child when the underlying incident occurred, nor have any statutory revisions since then improved this constitutional deficiency. *Compare* Or. Rev. Stat. § 419B.020 (2001) and Or. Rev. Stat. § 419B.020 (2009). Petitioner Alford admits that it was their policy, i.e. "regular practice," pursuant to "DHS rules and training" to not necessarily advise parents in conducting school based interviews. (Alford Brief 8).

controlling a child's associates is [ ] obvious[, ... it is a] choice ... not essentially different from the designation of adults who will influence the child in school"). Thus, the constitutional offenses resulting from the kinds of nonconsensual interrogations involved in the case *sub judice* are many, going well beyond the privacy interests of the parents and their children. Parents are being deprived of their rights in the management of their child, their right to participate in the conversation, to comfort and support the child regarding any emotional trauma resulting from the interrogation, and to terminate the conversation if the parent believes that to be in the best interests of their child.

IV. PARENTS' FUNDAMENTAL INTEREST IN THEIR CHILD SUPERSEDES THE LIMITED INTEREST OF THE STATE.

"The statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children is repugnant to American tradition." *Parham*, 442 U.S. at 603 (emphasis in original). Parents and children do not have competing interests, and it is not correct to *presume* or *assume* that parents and children are "adversaries." *Santosky*, 455 U.S. at 760 ("until the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship"). Our Constitution treats parents as natural allies of their children. *Parham*, 442 U.S. at 602. The Petitioners are guided by the view that parents are "frequent perpetrators of abuse." (Alford Brief 41).

Our jurisprudence holds a high regard for the family into which a child has been born. *Santosky*, 455 U.S. at 759, 765-66 (rejecting "balanc[ing]" of the "the child's interest in a normal family home against the parents' interest in raising the child," or consideration of "whether the child would have a better home elsewhere"). Our Constitution assumes that children want to remain with their natural family. *Id.* at 766. This Court has never recognized a separate interest or right that is child-specific, *per se*; the only recognized right for children in this context is the child's reciprocal right to maintain his natural family relationship. *Parham*, 442 U.S. at 603 (not all choices will be "agreeable to a child," but that "does not automatically transfer the power to make that decision from parents to some agency or officer of the state"); *Santosky*, 455 U.S. at 765. Shibboleths urging the government's "special interest" in protecting children, or invoking the altruistic language of "best interest," or simply saying that "children have a right to be free from harm" are legally insufficient criteria for "children's rights" and elevating the role of the state into the lives of families. *See* Martin Guggenheim, What's Wrong with Children's Rights, *passim* (Harvard University Press 2005). *All* human beings have dignity and the right to be free from harm—it is not uniquely a children's right. The *Santosky* Court's "refusal to consider the rights of the children [was] analytically correct, since such consideration would involve the assumption of unproven facts. ... [T]he refusal demonstrates th[is] Court's commitment, as a policy matter, to the autonomy of the family unit." Barbara Shulman, *The Supreme Court's Mandate for*

Proof Beyond a Preponderance of the Evidence in Terminating Parental Rights, 73 J. Crim. & Criminology 1595, 1606 (Winter 1982).

Our jurisprudence does not see the child in isolation, but as an extension and ward of his parents, not the state. *Parham*, 442 U.S. at 602-03 (parents are *presumed* to "act in their child's best interest"); *Pierce*, 268 U.S. at 535; *Meyer*, 262 U.S. at 401. Children are not merely autonomous individuals needing the cacophony of alternate voices (*e.g.*, state social services, guardian ad litems, educators, etc.) contending to speak on their behalf. *Yoder*, 406 U.S. at 213; *Parham*, 442 U.S. at 606 (rejecting childhood by committee approach); Guggenheim, What's Wrong with Children's Rights 95 (*e.g.*, assigning independent counsel for a toddler to advance the child's so-called interest is a legal fiction, as that grown-up lawyer assigned is merely advancing what that grown-up envisions as best for the child). Our Constitution rejects the notion that children receive independent consideration "absent a finding of neglect or abuse" by their parents. *Parham*, 442 U.S. at 604.

The State and the parent do not stand in equipoise, or have an equal interest in the child. Vivek S. Sankaran, *Parens Patriae Run Amuck: The Child Welfare System's Disregard for the Rights of Non-Offending Parents*, 82 Temple Law Review 55 (Spring 2009) (showing a historical rejection of broad *parens patriae* doctrine as case law on parental liberty interest was developed in *Meyer, Pierce, Prince, Yoder*). "The State's interest in caring for ... children is de minimis if [the parent] is shown to be [

] fit." *Stanley*, 405 U.S. at 657-58 (the State "spites its own articulated goals" of child protection when it presumptively and arbitrarily removes children without a due process hearing). The State's *parens patriae* interest in promoting the welfare of the child is secondary and triggered only where parents have been determined unfit. *Santosky*, 455 U.S. at 767 n.17; *cf. In re Gault*, 387 U.S. 1, 16, 30 (1967) (pejoratively describing latin term *parens patriae* as a rationalization "to exclude juveniles from the constitutional schemes" and invite "procedural arbitrariness").

The State has no viable interest in children who are with fit parents. The State only has an interest in children who are genuinely abused and need protection, and even then, that interest arises only after a judicial adjudication of parental unfitness. The State's obligation to investigate criminal conduct is a general welfare concern that extends to all its citizenry. That the State may not know whether the child in question is or is not abused, or encounters difficulty in determining same, is not a basis for the violation of fundamental rights of all parents to discover same.

> The fact that the suspected crime may be heinous—whether it involves children or adults—does not provide cause for the state to ignore the rights of the accused or any other parties. Otherwise, serious injustices may result. In cases of alleged child abuse, governmental failure to abide by constitutional constraints may have

> deleterious long-term consequences for the child and ... for the entire family.

Wallis v. Spencer, 202 F.3d 1126, 1130 (9th Cir. 1999). "Fourth Amendment ... governing principles should [not] vary depending on the court's assessment of the gravity of the societal risk involved." *Good v. Dauphin County Social Services*, 891 F.2d 1087, 1094 (3rd Cir. 1989) (citing *Mincey v. Arizona*, 437 U.S. 385, 393 (1969)); *Franz*, 997 F.2d at 785 ("because of our deep concern for the safety and well-being of young children that we ... do not balkanize the Fourth Amendment").

Here, assuming Petitioners were pursuing the proper mission[4] of investigating suspected child maltreatment, its interest in the Greene children is still *de minimis* because the children were with presumptively fit parents. *Stanley, Santosky, infra.* Here, the Greene parents *are presumed fit because that is how the Constitution treats natural parents and they retain that presumption* because there never was a *judicial finding* of abuse or neglect as to either one. *Troxel*, 530 U.S. at 68 ("no court has found, that Granville was an unfit parent, [and t]hat aspect of the case is important, for there is a presumption [of parental fitness]"). *An anonymous call is constitutionally insufficient to rebut the*

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[4] Under misguided federal legislation, states have a monetary incentive to create wards. Candra Bullock, Comment: *Low-Income Parents Victimized by Child Protective Services*, 11 Am. U.J. Gender Soc. Pol'y & L. 1023, 1048 (2003) (the Child Abuse Prevention and Treatment Act ("CAPTA") "has been criticized as being the source of 'huge fundraisers' for child protective service agencies.").

presumption of parental fitness; it is quite a leap to conclude that neither of the Greene parents can any longer function in their child's best interest. "Any apprehension" entertained by the state neither topples the presumption, nor is it a constitutionally acceptable standard for the deprivation of liberties, because *concerns are something anyone can have.* (Alford Brief 44: "any apprehension"; Camreta Brief 11, 27: based on "speculation and hearsay"). A concern-driven interview of a child, bereft of parental consent, deprives parents of their well-established fundamental liberty interests, turning the constitutional presumption due parents on its head. *Troxel,* 530 U.S. at 68 (the state's decision to force an association onto the mother "applied exactly the opposite presumption" from "fit parents act in the best interests of their children").

Consequently, *all* parents under *any* suspicion are presumed abusers—unfit to care for their children, unworthy to even have a voice in their child's interrogation. *See Doe,* 327 F.3d at 521 (the State "not only failed to presume that the plaintiff parents would act in the best interest of their children, they assumed the exact opposite, that the parents might be complicit in any abuse ... meted out by [the] Principal"). Simultaneously, the State crowns itself the champion of children and their self-appointed warden. However, this lofty view of the State as a super-parent has been soundly rejected by this Court in *Meyer, Pierce, Yoder, Stanley, Santosky,* and *Troxel, infra.* Thus, Petitioners' suggested constitutional framework, designed to obviate parental consent, undermines almost a century of this Court's jurisprudence.

V. THE PROCESS DUE PARENTS AT THE INVESTIGATIVE STAGE.

The *Santosky* Court balanced three distinct factors found in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) to grapple with the question of what process was due parents: (1) the private interest that will be affected by the state's action; (2) the risk of an erroneous deprivation of the fundamental interest through the procedures used, and the benefit of other additional procedural safeguards; and (3) the government's interest, including any administrative or fiscal burdens associated with substituted or additional requirements. *Santosky*, 455 U.S. at 754-55.

1. *Private Interests of Families*

A parent's interest in maintaining his family is an "essential," "basic civil right of man," "far exceeding mere property rights," and "beyond debate as an enduring American tradition." *Stanley*, 405 U.S. at 649-52; *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942), *May v. Anderson*, 345 U.S. 528, 533 (1953); *see also Parham*, 442 U.S. at 602 (1979); *M.L.B.*, 519 U.S. at 118; *Troxel*, 530 U.S. at 66. Both the child and the parent share the same interest in living free from unwarranted governmental interference. *Stanley*, 405 U.S. at 649-52, *Santosky*, 455 U.S. at 753, 765-66; *Tenenbaum*, 193 F.3d at 600; *Wallis*, 202 F.3d at 1136.

Since parents' "fundamental liberty interest" in their child "does not evaporate simply because they have not been model parents," there is no reason to

allow the rights of parents to be cast aside during an investigation, where parents merely sit under suspicion. *Santosky*, 455 U.S. at 753. "[P]arents [always] retain a vital interest in preventing the . . . destruction of their family life." *Id.* "[A]t the factfinding [stage], the interests of the child and his natural parents coincide to favor use of error-reducing procedures." *Santosky*, 455 U.S. at 761.

Accordingly, parents are due process during investigations, just like they receive due process during a termination proceeding. Paul Chill, *Burden of Proof Begone: The Pernicious Effect of Emergency Removal in Child Protective Proceedings*, 42 Fam. Ct. Rev. 540, 543-45 (2004) (discussing the high rate of "false positives," "more than one in three" were "later found not to have been maltreated at all" in light of easily wrought "drastic protective action" and "removal stampedes"). The "risk of error" is still strongly prevalent *ab initio* in unconstitutional searches and seizures of children and improper investigative techniques that both harm children, and lead to erroneous removals.

2. *The State's Interest*

The State has two interests: (1) protecting children from genuine abuse; and (2) ensuring that children are spared harms from improper investigations. *Calabretta*, 189 F.3d at 813. "The government's interest in the welfare of children embraces not only protecting children from physical abuse, but also protecting children's interest in the privacy and dignity of their homes and in the lawfully exercised authority of their parents."

Calabretta, 189 F.3d at 820; *see also Santosky*, 455 U.S. at 766-67 ("while there is reason to believe that a nurturing parent-child relationship exists, the *parens patriae* interest favors preservation, not severance, of natural family bonds"). The State has a duty to do "no harm" to fit families. *Wallis*, 202 F.3d at 1131 ("improper governmental action may create significant injury where no problem of any kind previously existed"). Thus, the State's interests in investigation requires a respect for the presumption of parental fitness, no pre-emptive interference with the parents' maintaining custody, control, care and management over their children, and usage of best practices to reach accurate conclusions, so as not to harm the children involved or erroneously separate them from their families. .

3. *The Unlimited License Sought by the State to Interview Children without Parental Consent or Management Risks Harming the Child*

Camreta claims to have chosen the school venue to make S.G. "feel safe." (Camreta Brief 3). His stated objective failed because S.G. felt "scared" when placed into a unfamiliar room with two complete strangers, and "sick" during the seizure. (J.A. 48,54,55,58; *see also* Docket # 53, Exh. C, pp. 72.-80: S.G. described state's counsel who deposed her as "less scary" than Camreta). Camreta's motive was parental avoidance couched in theories of parental interference. Coleman, *Storming the Castle*, at 431.

The State believes that the only worthy question in this debate is "who will protect the children from parents?" Equally indispensable to the query is *"who will protect the children from the State?"* This question must be asked and answered, since the State, though constitutionally prohibited, is in essence functioning as a child's super-parent in bypassing the natural parents' consent. *See Meyer, Pierce, Yoder, Stanley, Santosky,* and *Troxel, infra.* Here, Camreta's heavy-handed interrogation of a speech delayed child for *two hours*, and repeated contradiction of her initial statements, eventually wore the child into agreeing with everything Camreta wanted to make true, just to get out of the room and not miss her school bus home—where her parents were. (J.A. 42,47-48,51-52,57-58). In the safety of her home, the child threw up five times that evening. (J.A. 43). Of course, it was S.G's parents who comforted and cared for her during that difficult time, not Camreta. "Merely because *some* intrusion on a child's protected privacy and security interests may be reasonable does not mean that *any* intrusion is." *Wallis,* 202 F.3d at 1140 (emphasis in original); *Doe*, 327 F.3d at 512.

S.G. experienced a great deal of internal turmoil; she did not understand why she was required to say bad things about her father, and she instinctively knew that what she said would have an impact on her and her sister's relationship with their family. (J.A. 57-58). However, we define the generic societal interest in "child protection," it must necessarily include protection against abuse by all authorities, and guard "the child's psychological well-being,

autonomy, and relationship to the family." *Franz*, 997 F.2d at 792.

Our Constitution treats parents as the first line of defense for children for good reason. *Troxel*, 530 U.S. at 66, citing *Parham*, 442 U.S. at 602 ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children"). Parental consent and a parent's ability to withdraw consent, as part of the whole bundle of parental rights, is what would have "protected" S.G. from any abusive "child protection" experiences.

4. *Depriving Parents of their Fundamental Liberty Interest in Consenting to, Participating in, or Terminating Child Interviews Invites Risk of Producing Inaccuracies in Fact-Finding*

The State "shares the parent's interest in an accurate and just decision." *Santosky*, 455 U.S. at 766. The State has an obligation to be searching for the truth in the most legal and reliable manner, and to employ the best and least restrictive services to arrive at "accurate" conclusions. *Santosky*, 455 U.S. at 761 ("error-reducing procedures").

Depriving parents of an opportunity to consent, watch or participate in any interview allows an investigator over the course of a multi-hour custodial interrogation to badger a child into making unreliable statements. Yet, Petitioners actually assert that "*reason*" "does not require the abrupt

termination of an abuse assessment" because "victims are reluctant." (Alford Brief 59). Camreta, an adult, intimidated a child, repeatedly challenging S.G.'s denials of inappropriate touching, by telling her, "That's not it." (J.A. 52, 71). As with Mr. Miranda, Petitioner interrogated S.G. until she emerged from the room with the evidence that he sought. (J.A. 57, 71); *Miranda v. Arizona*, 384 U.S. 436, 491-92 (1966). S.G. stated, "I had a feeling that's what he wanted to hear, just lies, not truth." (J.A. 57).

The State's interview approach, with a young, fragile, speech-delayed child, forced an involuntary and an unreliable admission to parental abuse out of desperation to regain her freedom from the seizure. *See Greene*, 588 F.3d at 1017. Assuming that every child witness will eventually "break" is hardly a mechanism for achieving "accuracy" in fact-finding. *Lassiter v. Dept. of Social Servs. of Durham Cty.*, 452 U.S. 18, 27 (1981) ("[a] parent's interest in accuracy and justice ... is ... a commanding one").

5. *The Risk of Error in Unchecked Investigatory Practices is Deterred by Safeguarding the Parental Liberty Interests in the Investigative Phase*

Since *Santosky*, case law is replete with examples of child protective investigators making unilateral decisions to violate privacy rights and parental prerogatives because such was allegedly necessary

"to protect" children.[5] Often, untrained and unobjective "investigators"[6] go unchecked in isolating children and making unilateral choices that rightfully belong to the parent(s). Where there is no parental consent or probable cause order, these

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[5] "A reasonable inference may be drawn ... that it [is] 'standard operating procedure' to obtain [child] examinations without seeking judicial authorization or notifying the parents." *Wallis*, 202 F.3d at 1143; *Darryl H.*, 801 F.2d at 901 (strip search of child at school was seen as a significant intrusion into the child's privacy and violates the legitimate expectation of parents that their familial relationship will not be subject to unwarranted state intrusion); *Calabretta*, 189 F.3d at 820 ("there is a very substantial interest, which forcing the mother to pull the child's pants down invaded, in the mother's dignity and authority in relation to her own children in her own home"); *Franz*, 997 F.2d at 785 (police officer photographed child's vaginal area without parents knowledge); *Roe*, 299 F.3d at 397 (suggestive dancing by six year old girl led social worker to pressure mother into allowing her genitals to be spread and photographed); *Van Emrik v. Chemung County Dept. of Social Services*, 911 F.2d 863 (2nd Cir. 1990) (parents brought child to hospital suspecting that their babysitter was responsible for spiral fracture of right leg; social worker without parental consent had doctor perform x-rays to determine if older injuries to child existed); *Tenenbaum*, 193 F.3d at 598 (secreting child to the hospital for a vaginal exam without parental consent).

[6] *See Tenenbaum*, 193 F. 3d at 590 (misinterpreting selectively mute child answering "no" to everything even when certain questions would have required an affirmative answer to be patently true); *Doe*, 327 F.3d at 523 (misinterpreting nonexcessive corporal punishment as child abuse); *Wallis*, 202 F.3d at 1134 (waking up sleepy child at midnight for an interview only to misinterpret a story about a "spider" as meaning possible sexual abuse); *Franz*, 997 F.2d at 786 (misinterpreting diaper rash from wet pamper as possible sexual abuse); *Calabretta*, 189 F.3d at 813 (child crying "no, no, no" could have multiple interpretations, including disliking vegetables).

investigative "judgment calls" are not even reviewable. "Respecting privacy and conducting the sort of comprehensive investigation the system contemplates are inherently irreconcilable, at least when delegated to a single official." Coleman, *Storming the Castle* at 439-40.

Having parental involvement/oversight keeps state investigators honest. *Dubbs*, 336 F.3d at 1207 ("the requirement ... of parental consent in the case of minor children, serves important practical as well as dignitary concerns, even when a social welfare agency ... believes it is acting for the good of the child"). It is a meaningful check on the State's amnesiac tendencies to remember that the mission of child protection also embraces the duty to not harm the child during questioning or in erroneously separating her from her fit family. *Wallis*, 202 F.3d at 1130-31; *Stanley*, 405 U.S. at 653; *Calabretta*, 189 F.3d at 820. Having a parent nearby provides a watchful eye against misconduct/deception—was the child intimidated, coaxed, improperly led into stating a mistruth, or provided an implanted memory by repetitive questioning? Otherwise, "[i]ll-considered and improper governmental action may create significant injury where no problem of any kind previously existed." *Wallis*, 202 F.3d at 1130-31.

The constitutional limitations placed on law enforcers specializing in child protection should be no different than the limitations placed on other law enforcement, especially given the identity of those whom they regularly interrogate. Access to impressionable children, whose lives and dignity are inextricably intertwined with their parents, should

not be made easier, but be subject to more formalized processes to protect the high value of the constitutional rights at stake. "The individual should not be asked to share equally with society the risk of error when the possible injury to the individual is significantly greater than any possible harm to the state." *Santosky*, 455 U.S. at 768 (citing *Addington v. Texas*, 441 U.S. 418, 427 (1979)); *M.L.B.*, 519 U.S. at 121 ("we inspect the character and intensity of the individual interest at stake, on the one hand, and the State's justification for its exaction, on the other"); *Stanley*, 405 U.S. at 658 ("convenien[ce for the State to] "presume [rather] than to prove ... is insufficient ... when the issue at stake is the dismemberment of his family"). Preserving the fundamental liberty interest of parents will substantially reduce the risk of arbitrary and grossly subjective acts by child protective investigators.

6. *The Government's Limited Interest in Children is not being Hampered, but Advanced, by Securing Parental Consent or a Warrant*

Petitioners represent that "bleak statistics" and "staggering proportions" of child abuse should endorse a rule for child seizures requiring "scant judicial oversight." (Alford Brief 20, 32). "[C]ases of this order 'cannot be resolved by resort to easy slogans and pigeonhole analysis." *M.L.B.*, 519 U.S. at 120. Touting the "protection of children" is easy to appreciate. *Roe*, 299 F.3d at 406-07; *Meyer*, 262 U.S. at 401-02. But the "means adopted [must not] exceed the limitations upon the power of the State

and conflict with rights assured to [the family] in error." *Meyer*, 262 U.S. at 402.

Here, the "private interest is commanding," while the "governmental interest ... is comparatively slight." *Santosky*, 455 U.S. at 760-61. This is not simply a debate of balancing the child's interests against the State's interest in protecting the child, as narrowly framed by both Camreta and Alford. *Parham*, 442 U.S. at 600 ("the private interest at stake is a combination of the child's and parents' concerns"); *M.L.B.*, 519 U.S. at 119 (the parent "maintains that the accusatory state action she is trying to fend off is barely distinguishable from criminal condemnation in view of the magnitude and permanence of the loss she faces"). Camreta and Alford conveniently ignore the child and parents' *shared* interest in maintaining familial integrity, as well as the parental liberty interest in child management, and the government's duty to ensure that children are not harmed by its own actions. *Santosky, Stanley, Wallis, Calabreta, infra*. A closed door, multi-hour interrogation of an impressionable, speech-impaired child by a perfect stranger not only harms the child immediately, but also long term when the child discovers that what was cajoled out of her severed her family. Children like S.G. are not just disinterested witnesses, but have a personal stake in the outcome. Compare *Illinois v. Lidster*, 540 U.S. 419 (2004) (warrant unnecessary where *adult* road-stop witness' statements would have absolutely no consequence, criminal or otherwise, for the witness herself).

The Petitioners contend that notifying parents **and** seeking their consent, or securing a warrant impedes the State in its investigations. They demand unchecked "flexibility" and "swiftness" in the execution of their described duties. (Alford Brief 48). But in *truly* exigent circumstances, investigators always retain the power to seize a child without a court order. *Tenenbaum, Doe, infra.* Thus, Petitioners' frustration rings hollow.

Petitioners unreasonably ask this Court to accept as a constitutional foundation for its interference with the Greene parents rights their speculation regarding the motives of all parents suspected of abuse. But it is wrong to presume that *all* parents under suspicion will refuse consent to interview a child or interfere with an investigation. Coleman, *Storming the Castle* at 430-31 ("most investigations, over 90 percent by some estimates, are conducted with the apparent consent of relevant adults"); *cf. Stanley*, 405 U.S. at 654 (refusing to label "all unmarried fathers" as "unsuitable"). Contrary to the State's speculation regarding the denial of consent, Sarah Greene answered Camreta's questions during the home visit and gave him physical access to view S.G.'s bedroom door knob. (J.A. 48, 50).

> Procedure by presumption is always cheaper and easier than individualized determination. But ... it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand.

Stanley, 405 U.S. at 656-57; *see also Sankaran, Parens Patriae Run Amuck, passim* (due process violation to lump together *both* parents and deprive *both* of custody, control, and management of their children, when allegations are only against *one* parent); *Wallis*, 202 F. 3d at 1142 ("The government may not, consistent with the Constitution, interpose itself between a fit parent and her children simply because of conduct—real or imagined—of the other parent"). Contrary to interfering with the truth, Sarah Greene pursued the truth, repeatedly approaching S.G. to make sure that there was no abuse that had escaped her maternal attention. (J.A. 43-44).

Finally, "there is a critical difference between necessary latitude and infinite license." *Tenenbaum*, 193 F.3d at 595. Petitioners argue that they cannot "develop[ ] probable cause" against parents without cutting constitutional corners in their schoolhouse seizures. (Camreta Brief 11). The violation of familial privacy and the disregard of parental liberty interests cannot provide a posterior justification for an otherwise unconstitutional investigation. "The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency." *Stanley*, 405 U.S. at 656.

> In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the

> omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means-to declare that the government may commit crimes in order to secure the conviction of a private criminal-would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face.

Olmstead v. U.S., 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting).

So, Petitioners ask for a lower threshold, *i.e.*, that "any apprehension" meriting "prompt attention" is the equivalent of the probable cause requirement. (Alford Brief 44). Employing this standard would allow any agent of the state to search and seize any child for any length of time, at any place, and at any hour, as reasonable *per se*. *Cf. Tinker*, 393 U.S. at 508 (criticizing "undifferentiated fear or apprehension" as being an unreasonable basis to overlook fundamental right). Such a standard is entirely too broad to be constitutional.

The Petitioners were entitled to constitutionally investigate through securing a court order. The State knew about Nimrod Greene's *alleged* post-drinking friskiness on or about

February 10, 2003 from the Smiths who left their son alone with him despite having such prior knowledge. Yet, the State did not interview S.G. until February 24, 2003, *almost two weeks later*. Camreta personally let four days pass from notice.[7] Clearly, the State perceived no immediacy or exigency from these internally flawed allegations. Under these facts, had the State sought a warrant, and assuming *arguendo* probable cause was established, it is unlikely that the warrant would allow Camreta to seize and interrogate the child as he did. *Tenenbaum* at 594 ("judicial contribution makes a fundamental contribution to the proper resolution of the tension among the interest"). Of course, submitting to a neutral magistrate always runs the risk of being told no, which could be the motive here than the proffered need for swiftness and flexibility. *Doe*, 327 F.3d at 513 (the "failure [to seek a warrant] speaks volumes").

Alternatively, the State could secure parental consent before questioning the child. *Dubbs*, 336 F.3d at 1215 ("parental notice and consent is [not] "impracticable" in this context, which is the requirement for a special needs exception to the

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[7] The claimed need for swiftness is often betrayed by the sheer number of days that elapse between the initial tip and the subsequent seizure. *Calabretta*, 189 F.3d at 813 (14 days as investigator went on vacation after receiving tip); *Wallis*, 202 F.3d at 1132-33 (4 days elapsed from social workers receiving report from therapist of psychotic relative rambling about child sacrifice rituals to seizing the children); *Doe*, 327 F.3d at 501-02 ("nearly two weeks later" for the first reported spankee, and "[f]inally more than three months" for the second identified spankee); *Tenenbaum*, 193 F.3d at 588-90 (5 days from the initial report by a mandatory reporter to seizing child).

Fourth Amendment"). Instead the State impugns the motives of *all* parents across the board as a basis to avoid obtaining parental consent.

Child protective investigators should seek to operate within all constitutional constraints if committed to serving the long-term interests of children. *Weis v. State*, 800 N.E.2d 209 (Ind. App. 2003) (suppressing evidence of poor housekeeping on a charge of criminal neglect of a dependent, where there was no emergency to create the exigent circumstances to permit a warrantless entry into a dirty home); *Kazery v. State*, 995 So. 2d 827 (Miss. 2008) (social service work should reflect a desire for reliable prosecution outcomes by using best practices in limiting child interviews to trained forensic interviewers). Honoring parental prerogatives can only strengthen a State's interest in prosecuting proscribed conduct by having legally obtained evidence through a consensual search. Similarly, "requiring caseworkers to obtain the equivalent of a warrant before searching ... ensures that the constitutional interests of the child, parents, and schools, are safeguarded, while at the same time preserving the state's compelling interest in protecting children from being abused." *Doe*, 327 F. 3d at 514.

CONCLUSION

Schools have long served as battlegrounds where the State has competed for children by encroaching upon the fundamental liberty interests belonging to parents. Constitutionally unrestrained investigations are fraught with peril for children and

for their parents who love them. In an isolated school setting, the State is essentially unfettered in its ability to control children, thereby stripping parents of their presumption of fitness firmly ensconced in this Court's case law. "Any apprehension" is not a constitutionally sufficient basis for subverting parents' interest in maintaining custody, control and management over their children. Hanging in the balance of this struggle is the shared interest that children and parents have in maintaining the integrity of their natural family. For these reasons, *amici* support the position of the Respondent, the Greene family.

Respectfully submitted,

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